IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Civil Writ Petition No. 31 of 2003 (S/S)

Bishan Singh Mehra
and 48 others …….. Petitioners

Versus

Vice Chancellor,
Govind Ballabh Pant Krishi
Avam Prodyogik Vishwavidyalaya,
Pant Nagar, Distt. Udham Singh Nagar
and others …….. Respondents

date of decision: 1, September 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

RESERVED JUDGMENT

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Bishan Singh Mehra
and 48 others ……. Petitioners

versus

Vice Chancellor,
Govind Ballabh Pant Vishwavidyalaya,
Pant Nagar, Distt. Udham Singh Nagar
and others ……. Respondents

Mr. V.B.S. Negi, learned counsel for the petitioners.
Mr. Rajendra Dobhal, learned counsel for respondents.

Hon'ble P.C . Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioners have challenged the order dated 22.11.2002 passed by the Vice Chancellor, G.B. Pant University of Agriculture and Technology, Pant Nagar, District Udham Singh Nagar.

2) Brief facts of the case as stated in the writ petition are that the respondent University was constituted in the year 1958 under the U.P. Krishi Avam Prodyogik Vishwavidyalaya Adhiniyam, 1958 as an autonomous body. At the time of the constitution of the University it was provided 16000 acres of farm land for its use. In the year 1960, the lowest level Class III posts were in the pay scale of Rs. 230 – 385 which included Laboratory Assistant, Clerk – Typist, Accounts Clerks, Store Keepers, Bill Clerks. Through a Government letter No. 2236 / 12-8 / 400 / 70 / 82 dated 11th May 1983, the Vice Chancellor of the University was told that there are discrepancies about the positions of 64

categories of employees, in response to which, the Board of Management of the University in its 90th meeting passed a resolution on 30.06.1983 and granted pay scale of Rs. 430 – 685 for the scale of Rs. 354 – 550 (revised by the Second Pay Commission) and it was further resolved that those appointed prior to 30.06.1983 will be given higher scales as above and all the appointees after said date i.e. 30.06.1983 will be given revised pay scale as recommended by the Second Pay Commission. Accordingly, the Government Order dated 20.08.1983 was issued revising the pay scale of Rs. 230 – 385 to Rs. 354 – 550. However, the University allowed one Sri Govind Singh and Sri C.B. Yadav who were appointees after 30.06.1983 the higher pay scale applicable to the employees who were appointees prior to the said date. The U.P. Government vide D.O. letter No. 1636 / 12-8-400(33) / 82 dated 01.05.1986 required the University to submit a proposal for consideration of anomalies existing in the revised pay scale by the Second Pay Commission, in response to which the Board of Management granted approval of the revised pay scale as personal scale to its employees who were appointed prior to 30.06.1983. Meanwhile, University in exercise of powers conferred by Clause 1 of Section 10(7) of the U.P. Krishi Avam Prodyogik Vishwavidyalaya Adhiniyam, 1958 framed Subordinate Staff Service Rules vide resolution No. 106 dated 25.08.1996 from which date these Rules came into force. It is alleged that the University vide its order dated 25.11.1986 granted revised pay scale of Rs. 430 – 685 to Ramesh Chandra Sharma in arbitrary manner. Similarly one B.D. Bhatt was also given the same scale arbitrarily. With effect from 01.01.1986 the pay scale of all Government employees were revised which included Rs. 1200 – 2040 for the pay scale of Rs. 430 – 685 and Rs. 950 – 1500 for the scale Rs. 354 – 550. The Board of Management of the University in its 131st meeting made the recommendations of Pay

Commission applicable as above. Later on in view of the Government Order No. 690 / 12-8-400(238) / 89 dated 24.02.1990, Personnel Management Section of the University issued an order dated 28.09.1991 further revising the pay scale of Rs. 354 – 550 to Rs. 1200 – 2040 w.e.f. 01.01.1986. To remove the disparities as existed between the similarly situated employees a Standing Committee was constituted by the Board of Management through its meeting No. 141 held on 15.10.1991. The Standing Committee considered the representations of the employees relating to the anomalies and recommended on 17.03.1992 that all the similarly situated employees should be given the same pay scale. The Board of Management accepted the recommendation of the Selection Committee but the employees holding the posts of Clerk – typist / Accounts Clerk / Store Keeper which included petitioners were given pay scale of Rs. 950 – 1500 and they made a representation dated 25.11.1992 (copy Annexure – 16 to the writ petition) that they are entitled to pay scale of Rs. 1200 -2040 like other Class III employees and thereafter the petitioners filed a writ petition No. 8687 of 1993 under Article 226 of the Constitution of India before the Allahabad High Court which on its transfer to High Court of Uttaranchal was renumbered as 2936 of 2001. In said writ petition the difference between the pay scales as against the petitioners was alleged to be arbitrary and violative of Article 14 of the Constitution of India. During the pendency of the writ petition, the Board of Management in its meeting dated 12.09.1994 passed a resolution for adjusting the employees working in the earlier pay scale in the higher pay scale with approval of the pay revision Commission. Aforementioned Sri Govind Singh and Sri C.B. Yadav were adjusted in the pay scale of Rs. 1200 – 2040. Sri Ramesh Chandra Sharma and Sri B.D. Bhatt were appointed as Cold Storage Operator and Duplicating Assistant Cum Mechanic and they were also given the pay scale

of Rs. 1200 – 2040. Similarly, one Kamal Singh Rawat who was appointed as Registration Clerk and he was also allowed the pay scale of Rs. 1200 – 2040. A Division Bench of this High Court has disposed of the writ petition No. 2936 (S/S) of 2001 vide order dated 22.05.2002 whereby it was directed that the petitioners will be given parity with their other counter parts w.e.f. 09.11.2000. Aggrieved by said order of the High Court of Uttaranchal, a Special Leave Petition Civil No. 19345 – 47 of 2002 was moved before the Apex Court by the University. The Hon'ble Apex Court disposed of said petition vide order dated 13.01.2003 with the observation that the Vice Chancellor of the G.B. Pant University, Pant Nagar by office order No. VC / Estt. / 183 dated 22.11.2002 has considered the claim of the respondents regarding parity of pay scale with the other employees. In this writ petition, said order dated 22.11.2002 (copy Annexure -23 to the writ petition) passed by the Vice Chancellor of the University has been challenged on the ground that the classification made between the employees is arbitrary and violative of the provision of Article 14 of the Constitution of India.

3) A counter affidavit has been filed on behalf of the respondents in which it has been stated that the University was initially established in the year 1958 under the "Land Grant Pattern System" and mainly they have to earn money for running the University from its own resources. Subsequently, after reduction of 16000 acres of land held by it and increase in the faculty members, the State Government started giving the financial assistance and at that stage the pay scale prescribed by the U.P. Government whether higher or lower were made applicable to the employees recruited thereafter as such the employees were classified from the date w.e.f. June 30, 1983. The classification was neither arbitrary nor violative of Article

14 of the Constitution of India. The employees who were recruited after 30.06.1983 were well aware of their pay scale as the same were advertised at the time of their recruitment, as such they cannot claim with the other employees who cannot said to be similarly situated. There were certain posts of different nomenclature which did not find place in the pay scale of Rs. 230- 385, as such their revision of pay scale to Rs. 1200 – 2040 cannot be equated with that of the petitioners. In the counter affidavit it is further stated that Ramesh Chandra Sharma, B.D. Bhatt, Govind Singh and C.B. Yadav were the persons who applied for the job in the University prior to 30.06.1983. Lastly, in the counter affidavit it has been stated that the petitioners are not entitled to said pay scale with retrospective effect from 01.01.1986.

4) I heard learned counsel for the parties and perused all the affidavit along with the annexures annexed thereto.

5) The short question for consideration before this Court is whether the petitioners are entitled to the revised pay scale of Rs. 1200 – 2040 w.e.f. 01.01.1986 and is the impugned order dated 22.11.2002 passed by the Vice Chancellor of the University (copy Annexure- 23 to the writ petition) by which the petitioners were effused said request is liable to be quashed? Also, it is to be seen if after the Apex Court order dated 13.01.2003 if fresh round of litigation still open on the issue?

6) Before further discussions, it is pertinent to mention here the order dated 22.05.2002 passed by the Division Bench of this Court in writ petition No. 2938 (S/S) of 2001 (old No. 10358 of 1993 received by transfer from Allahabad High Court) between the parties in respect of the same controversy, which reads as under:

"All the aforesaid writ petitions evolve the identical question of law and facts and, therefore, these are being disposed of together.

The petitioners are claiming parity in the pay scale of Rs. 1200 – 2040 w.e.f. 01.01.1986 with their counter parts appointed before 30.06.1983.

Heard Sri J.C. Joshi, learned counsel for the petitioners and Sri R. Dobhal, learned counsel for the G.B. Pant University of Agriculture and Technology.

After hearing learned counsel for the parties we direct that the Vice Chancellor shall consider the claim for the grant of parity to the petitioners w.e.f. 09.11.2000 provided they forego their claim of arrears upto 08.11.2000. However, those who are already getting the above pay scale shall not be affected by settlement in these cases.

The petitions are disposed of accordingly."

sd/- P.C. Verma, J. *sd/- Irshad Hussain, J*

7) The above common order was passed in W.P. No. 2936 (S/S) of 2001 & W.P. No. 2937 (S/S) of 2001 & W.P. No. 2938 (S/S) of 2001. From the record it appears that the respondent University filed petition for Special Leave to Appeal (Civil) No. 19345 – 47 of 2002 before Hon'ble the Supreme Court of India which was disposed of on 13th January 2003 with following orders:

"Heard the learned counsel for the parties.

In view or our order dated 11th October, 2002, the Vice Chancellor of G.B. Pant University by Office Order No. VC / Estt. / 183 dated 22nd November, 2002, has considered the claim of the respondents as to whether they can have parity scales with other

employees. The copy of the order is produced on record.

In this view of the matter, no further orders are required to be passed in this matter and the petition stands disposed of, accordingly."

8) From the above orders passed in the earlier found of litigation, it is clear that the controversy has been finally settled between the parties. That being so the order of 22.05.2002 passed by the Division Bench of this Court in the aforesaid writ petitions filed earlier by the petitioners, stands final to the extent that the petitioners were not entitled to the pay scale of Rs. 1200 – 2040 w.e.f. 01.01.1986. Now, this Court cannot see if the impugned order dated 22.11.2002 passed by the respondent No. 1 is bad in law after the same has been accepted by the Apex Court in aforesaid petition for Special Leave to Appeal (Civil) No. 19345 – 47 of 2002 in respect of applicability of said pay scale from 01.01.1986. In para 30 of the counter affidavit, the respondents have stated that the employees of Agriculture Service of Grade II and Grade III have been given now identical pay scale of Rs. 1740 – 3000 as per the Government Order dated 05.08.2002 (copy Annexure C.A 3 to the counter affidavit). During argument, learned counsel for the petitioners admitted that the petitioners now seek the relief only in respect of the parity prior to 09.11.2000. In view of the order dated 22.05.2002 as quoted above passed in the writ petition No. 2938 (S/S) of 2001 and other connected writ petitions and the order dated 13.01.2003 passed by the Apex Court, it is now not open for the petitioners to claim the pay scale Rs. 1200 – 2040 from the date 01.01.1986. Though Section 11 of Code of Civil Procedure, 1908 does not apply to the writ petitioners but the principle of law based on same analogy does apply.

9) As to the impugned order dated 22.11.2002, this Court does not find any arbitrary discrimination between the petitioners and those who were earlier allowed pay scale of Rs. 1200 – 2040 as pay scale for the post advertised prior to 30.06.1983 and for those who were recruited thereafter was different as the University had to bank thereafter on the public exchequer of the State. Apart from this the instances which has been mentioned in the writ petition alleging them to be similarly situated, it is pertinent to mention here that specific posts held by them were different to that of the petitioners. Before this judgment is concluded, it is not improper to say that the practice of not impleading the parties as respondents against whom favouritism or arbitrarily granting revised pay scale is alleged, is unhealthy.

10) As such in view of finality in earlier round of litigation on same issue, there remains little substance in the present petition, which is liable to be dismissed. Accordingly, the writ petition is dismissed. No order as to costs.

(P.C. Pant, J.)

Dt: 1st September 2004.
H.Negi